



UNITED STATES DEPARTMENT OF COMMERCE
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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
07/965,069	10/22/92	MICHELSON	G P-10936II

LEWIS ANTEN
THE LAW OFFICES OF LEWIS ANTEN
16830 VENTURA BLVD.
SUITE 411
ENCINO, CA 91436

EXAMINER

HANLON, B

ART UNIT

PAPER NUMBER

3301

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DATE MAILED:

02/10/93

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on _____ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input checked="" type="checkbox"/> Notice re Patent Drawing, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152 |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-13 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
2. ☒ Claims 1-8, 10, 13 have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 9, 11 and 12 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

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Claims 9, 11 and 12 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 is rejected for it is unclear as to applicant's use of the word "individual" on line 5 of claim 9. It is unclear if "individual" is an adjective describing the projections or if "individual" is an adverb defining the word "flexible". If the word "individual" is an adjective describing projections, then applicant must separate the words (adjectives) "individual" and "flexible" by a comma. If applicant asserts that individual is an adverb which further describes the projections flexibility then the below first paragraph rejection applies. Claims 11 and 12 are also rejected for if applicant wishes to claim the rivet and its drives, then the preamble of applicant's claim must reflect a combination or kit claim not one merely drawn to the rivet.

The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The specification is objected to under 35 U.S.C. § 112, first paragraph, as the specification, as originally filed, does

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not provide support for the invention as is now claimed. There is no support in the specification for the projections being independently flexible.

Claims 9, 11 and 12 are rejected under 35 U.S.C. § 112, first paragraph, for the reasons set forth in the objection to the specification.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9, 11 and 12 are rejected under 35 U.S.C. § 102(b) as being anticipated by Bays et al.

Bays et al discloses the structure as claimed by Applicant. Bays et al also discloses spaced projections which are independent of each other and flexible. He discloses that each projection (16) is located at a spaced distance from the other projections, thus, they are independent of each other. He also discloses that these projections may be made of a semi-rigid material, thus, they are inherently flexible for something that is semi-rigid contains some flexibility.

If applicant asserts that these projections are not independent and flexible then the following rejection applies:

The following is a quotation of 35 U.S.C. § 103 which forms

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the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 9, 11 and 12 are rejected under 35 U.S.C. § 103 as being unpatentable over Bays et al in view of Chisholm et al. Chisholm et al teaches the use of independent flexible projections on a driven fastener that is placed in a work piece to secure something to said work piece.

It would have been obvious to modify Bays et al with the independent flexible protrusions as taught by Chisholm et al for Chisholm et al teaches that these protrusions would aid in the insertion of the Bays et al fastener and would increase the security of the Bays et al device once located in the bone of the patient.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Paravano, Bell, Lewis and Dwyer are cited to further show


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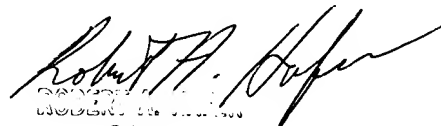
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the state of the art in pushing in fasteners with individual, flexible protrusions. Hunt et al and Ross et al (date of this reference does not make it prior art against applicant's application) are cited to further show the state of the art in surgical implants used with tissue. Schreiber and Duncan are cited for the reasons they were cited previously.

Any inquiry concerning this communication should be directed to Brian Hanlon at telephone number (703) 308-2678.


B. Hanlon/dh
February 03, 1993


ROBERT A. HOYER
S.P.E.
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